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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 596

H. H. IRVINE,

Appellant,

vs.

G. HOWARD SPAETH, COMMISSIONER OF TAXATION OF MINNESOTA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

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STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

Now comes G. Howard Spaeth, Commissioner of Taxation of Minnesota, the appellee herein, and for his statement in opposition to appellant's statement as to jurisdiction of the Supreme Court of the United States, and in support of appellee's motion to dismiss or affirm respectfully shows:

I. Statement of Issue on Appeal.

The sole question sought to be presented in this appeal is the claim by appellant that the State of Minnesota, having imposed a property tax on shares of national banks, cannot impose a tax on the income received by an individual in the

form of dividends paid to him by First Bank Stock Corporation to the extent that those dividends passed on to him the income from national bank dividends which was received by the First Bank Stock Corporation as the owner of national bank shares. This claim of the appellant the appellee denies, and the State Supreme Court, in the opinion and judgment here challenged, determined the question and all others presented by the appellant adversely to him.

II. Summary Statement of Facts.

In 1937 the plaintiff received dividends on stock held by him in First Bank Stock Corporation, which in turn is the owner and holder of shares in State and national banks. He included in his State income tax return the full amount of these dividends, but thereafter filed a claim for refund of that part of the tax which was based upon that portion of the dividends which the plaintiff claims were paid out of dividends received by the First Bank Stock Corporation from national banks. The claim for refund was denied, and the appellant brought an action for the recovery of the amount claimed. The judgment of the trial court, and of the Supreme Court of Minnesota, went against him.

The material portions of the Minnesota State Income Tax Law, which imposes the tax here in question, are as follows: References are made to Mason's Statutes, 1938 Supplement.

> "2394-2—An annual tax for each taxable year, computed in the manner and at the rates hereinafter provided, is hereby imposed upon the taxable net income for such year of the following classes of taxpayers: * * *
>
> (b) Resident and nonresident individuals. * * *"
>
> "2394-10.—The term 'gross income' shall include every kind of compensation for labor or personal serv-

ices of every kind from any private or public employment, office, position or services, whatsoever; income derived from the ownership or use of property; gains or profits derived from every kind of disposition of, or every kind of dealings in, property; income derived from the transaction of any trade or business; and income derived from any source whatever. Items of gross income includible within said definitions shall be deemed such regardless of the form in which received. * * * "

III. There is No Substantial Federal Question.

The Federal question which appellant invokes to sustain the jurisdiction of the United States Supreme Court is that the Minnesota State Income Tax, insofar as it is measured by that portion of the dividends received from First Bank Stock Corporation which he claims is traceable to dividends paid by national banks, is in violation of R. S. Sec. 5219 (12 U. S. C. A. 548).

It is respectfully submitted that the Federal question presented is not substantial and is not sufficient to properly invoke the jurisdiction of this Court.

Zucht v. *King*, 260 U. S. 174, 43 S. Ct. 24.

It is settled, by a recent decision of this Court, that R. S. 5219 prohibits only taxes which are discriminatory. In *Tradesman's National Bank* v. *Oklahoma Tax Commission*, 309 U. S. 560, 60 S. Ct. 688, 84 L. Ed. 947, the purpose and effect of R. S. Sec. 5219 is stated as follows:

> "A consideration of the course of judicial decision on R. S. Sec. 5219 and its predecessors can leave no doubt that the various restrictions it places on the permitted methods of taxation are designed to prohibit only those systems of State taxation which discriminate in practical operation against national banking associations or their shareholders as a class."

Appellant does not claim, and cannot claim, that the Minsota Income Tax Law is discriminatory in practical operation against national banking associations or their shareholders as a class.

The tax in question is not imposed upon national banks, nor upon the owner and holders of shares in national banks.

The First Bank Stock Corporation is a corporation which among other activities is engaged in the business of holding the shares of, and managing, national and State banks. See *State* v. *First Bank Stock Corporation,* 197 Minn. 544, 267 N. W. 519, 269 N. W. 37, affirmed in 301 U. S. 234, 57 S. Ct. 677, 81 L. Ed. 1061. The corporation is a "nonconductor" of any immunity that may attach to dividends paid by national banks.

Van Allen v. *The Assessors,* 3 Wall. 573, 18 L. Ed. 229; *Des Moines National Bank* v. *Fairweather,* 263 U. S. 103, 44 S. Ct. 23, 68 L. Ed. 191.

In the cases relied on by appellant (*Bank of California* v. *Richardson,* 248 U. S. 476, 483; *Schuylkill Trust Company* v. *Pennsylvania,* 296 U. S. 113; *Schuylkill Trust Company* v. *Pennsylvania,* 302 U. S. 506), the taxes held invalid were property taxes, measured by the value of national bank shares which had already been included in the measure of another property tax, and the taxes in question were payable by, and from the assets of, an owner and holder of national bank shares. The tax questioned here is imposed upon the income of an individual and is in no way a burden upon, or payable by, or from the assets of, the First Bank Stock Corporation.

Upon the record and the authorities above cited, the appellee submits that there is no substantial Federal question here presented to properly invoke the jurisdiction of this Court.

Appellee therefore moves this Honorable Court to affirm the decision below or to dismiss the appeal for want of a properly presented, substantial, Federal question.

Respectfully submitted,

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